

To: Kate Fay/R8/USEPA/US@EPA[]
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[EPA Seeks To Limit Fallout From Court's Rejection Of 'Aggregation' Test](#)
[Draft RGGI Analysis Sees Little Power Price Impact From Stricter GHG Cap](#)
[Environmentalists Urge Administration To Expand Keystone's GHG Review](#)
[Industry Objects To EPA Revocation Of CBI Protections For GHG Registry](#)
[EPA Weighs GHG Reporting Changes For Paper Sector](#)
[Sierra Club Pushes Climate Goals](#)
[Draft Climate Study Spurs Calls for Action](#)
[Automakers Seek To Defend EPA's Vehicle GHG Rule From Lawsuits](#)
[Appellate Judge Warns E15 Ruling Creates 'Erroneous' Standing Precedent](#)
[Funding Shortfall May Shutter Air Force's Alternative Fuels' Office In March](#)
[Oil Industry Seeks EPA Enforcement Discretion Ahead Of RFS Credit Rule](#)
[API Ad Campaign Targets RFS](#)
[Fuel Groups Push 2013 RFS Goals](#)
[High Court To Hear Clean Truck Suit](#)
[EPA Limits Scope Of Review For Oil Groups' NSR Rule Streamlining Push](#)
[EPA Weighs Resource Needs For CCS Permit Program Absent Projects](#)
[Environmentalists, Industry Weigh Suits Over EPA Combustion Air Rules](#)
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Clean Energy Report's Weekly Analysis explains the complex interrelationships of the week's top news stories and points you to the most important developments in environment and energy policy. Backed by links to our exclusive articles and documents, the Weekly Analysis offers a fresh take on the essential trends, themes and behind-the-scenes action that are shaping clean-energy policy.

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Creates Clean Energy Uncertainty . . . PTC Extension Buys Time For Broad Reform Talks . . . House GOP Moves To Repeal Clean Energy Incentives In 'Cliff' Deal . . . More on these and other developments below:

Natural Gas

EPA In Crossfire Over Controversial Studies On Fracking Water Impacts

EPA is taking heat from both environmentalists and Republican leaders in Congress over separate studies the agency is carrying out that examine whether hydraulic fracturing operations have impacts on drinking water quality. The controversy underscores the significance of EPA's studies, which could justify much tighter regulation of the oil and gas extraction practice.

EPA officials acknowledged recently they are not expecting to complete studies that prospectively monitor contamination at new fracking sites until after the agency completes a massive study of the process's possible impacts on drinking water. Environmentalists complain that the delay may hinder the usefulness of the larger analysis because the prospective studies would have provided a crucial pre-drilling baseline to measure whether and when contamination may occur.

Environmentalists and some Democratic lawmakers are hoping the agency's two-year, congressionally directed study of the relationship between fracking and drinking water will provide the first documented analysis of whether and how the controversial extraction process contributes to groundwater contamination, bolstering support for stricter federal regulation of natural gas development.

For the prospective case studies, EPA plans to sample groundwater near the sites prior to, and after, each stage of drilling, allowing the agency to collect baseline data so that any water quality changes that occur as the site is developed can be recorded. But EPA has struggled with technical and legal issues in orchestrating the plans for prospective studies with participating companies, which has delayed the agency's efforts.

In an interim version of the report released late last year, EPA said it anticipates that the prospective studies, which will take up to a year to complete after they have commenced, will not be available until after the larger study is published, currently slated for December 2014.

Meanwhile, Republican senators are criticizing EPA for again delaying a separate draft study linking groundwater contamination in Pavillion, WY, to fracking fluids. Sens. David Vitter (R-LA), ranking member on the Senate environment committee, and James Inhofe (R-OK) charge in a Jan. 17 letter that the agency's decision extending the public comment period on the study until Sept. 30 allows critics to cite the 2011 draft report to push for strict new regulations.

The draft report represents the first time the agency has publicly acknowledged that groundwater contamination of an aquifer was "likely" due to fracking chemicals, the senators tell EPA Administrator Lisa Jackson in the letter.

Industry and Republican lawmakers have widely charged that the study is flawed, arguing that EPA's sampling methodology could have contributed to the contamination, that the agency ignored data showing evidence that contaminants were naturally occurring, and that the findings relied on data sets that are too narrow to support the draft conclusions.

Vitter and Inhofe also suggest that the draft Pavillion report raises questions about the agency's methodology for its larger, congressionally directed study seeking to examine the potential impacts of fracking on drinking water, saying "how can Congress and the public have any confidence in the results of this ongoing study?"

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Climate Change

Draft RGGI Analysis Sees Little Power Price Impact From Stricter GHG Cap

The Northeast's Regional Greenhouse Gas Initiative (RGGI) utility climate cap-and-trade program is floating a new draft analysis that says even the most aggressive carbon caps under consideration for revisions to the program would create only small increases in power bills for utility customers, which arrives amidst questions over how EPA will structure a future greenhouse gas

(GHG) rule for existing power plants.

Any revision to future program emissions caps could affect the implementation of RGGI, particularly as it relates to EPA's efforts to reduce GHGs from existing plants. Environmentalists in recent months have argued that only the strictest limits under consideration by states could be shown to lower emissions below current levels and therefore prove that the program is "equivalent" to future EPA requirements for GHG emissions from the sector as required by the Clean Air Act.

The nine Mid-Atlantic and Northeast states taking part in RGGI are working to finalize a model rule by the end of February for possible changes to the program, and any revisions would likely be effective starting in 2014 after their adoption by individual states. The modifications are under discussions as part of a required program review at a time when GHG levels in the RGGI region are already well below the existing 165 million ton carbon dioxide cap.

In another highly controversial issue with carbon emission implications, environmentalists are urging the Obama administration to expand the scope of GHG impacts it is reviewing for a decision on whether to permit the Keystone XL tar sands pipeline, saying GHGs from petroleum coke should be included because they would significantly boost the project's GHGs and justify denying the permit.

The proposed pipeline from Alberta, Canada, to the Texas Gulf Coast is designed primarily to transport tar sands. Environmentalists -- who say defeating the pipeline is a top priority and warn that approving it cannot be squared with the president's commitment to address climate change -- have long criticized the high level of GHGs associated with tar sands extraction and refinement, arguing it is several times higher than for conventional oil production. Now they are criticizing the GHGs from petroleum coke (petcoke) production -- a byproduct of tar sands that would be sold along with the oil -- that they warn has a worse carbon emissions profile than coal.

The State Department is in the midst of reviewing the impacts of a new pipeline route to avoid sensitive lands in Nebraska after it recommended a presidential permit to build the pipeline be denied early in 2012, in response to a congressional-imposed deadline. The department did not respond to a request for comment on the report on the petcoke emissions impact, or to provide information on when it expects to issue its new recommendations.

On the federal GHG regulatory front, industry groups are protesting EPA's decision to revoke confidential business information (CBI) protections for several sectors required to report to the agency's GHG registry, but say they may have few options to challenge the decision because EPA did not make the change in a formal rulemaking.

EPA in a Dec. 17 memo, "Summary of Evaluation of Greenhouse Gas Reporting Program Part 98 'Inputs to Emissions Equations' Data Elements Deferred Until 2013," ends an earlier deferral of reporting data due to CBI claims for some GHG data for boilers, electrical transmission and distribution equipment and other units. This means that companies can still claim their data is CBI, but if EPA receives a Freedom of Information Act (FOIA) request for the data, then it will make a case-by-case determination on releasing it.

One industry source says this approach creates "a very uncertain future" for facilities to protect their own data. But environmentalists welcome the agency's revocation of CBI protections and are urging EPA to end the deferral for other sectors that are currently able to claim information is CBI, especially the oil and gas industry.

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Vehicles/Fuels

Automakers Seek To Defend EPA's Vehicle GHG Rule From Lawsuits

Two major automaker groups' intervention in an ongoing lawsuit to defend recent fuel economy and greenhouse gas (GHG) rules could bolster the Obama administration's efforts to defeat the electricity and other sector's bid to overturn the rules, particularly given that the administration successfully defended its last round of GHG-fuel economy rules against similar attacks.

The Alliance of Automobile Manufacturers and the Association of Global Automakers Jan. 11 filed motions to intervene on behalf of EPA and the Department of Transportation (DOT) in the case, Utility Air Regulatory Group (UARG), et al. v. EPA, et al., where a number of industry groups are challenging passenger vehicle rules for model years 2017-2025. The case is in the procedural stage before the U.S. Court of Appeals for the District of Columbia Circuit.

The model year 2017-2025 rules and a related rule for model years 2012-2016 stem from an agreement between the Obama administration, auto companies and California establishing national vehicle GHG and fuel economy limits. A three-judge panel of the D.C. Circuit last year upheld the 2012-2016 rules, EPA's GHG endangerment finding and other GHG rules, with the full court in late 2012 rejecting petitions to rehear the case.

In their motions to intervene, automakers say they will be harmed if the energy and manufacturing industry efforts to overturn the model year 2017-2025 rules are successful and that the challenges could undermine the consistency of federal regulations. The global automakers say that "[b]ecause regulations that control a motor vehicle's fuel economy and its resulting GHG emissions go to the very core of the design of the vehicle, subjecting manufacturers to a multitude of potentially conflicting federal and state regulations in this area is immensely inefficient and costly."

In another legal development affecting clean-transportation rules, a D.C. Circuit judge is warning that the circuit's decision denying food and oil groups' standing to challenge the agency's approval of 15 percent ethanol (E15) fuel sales has created a "problematic" and "erroneous" precedent that sets a more restrictive "prudential" standing test for groups not directly regulated by agency rules than what the Supreme Court has recently allowed.

In a Jan. 15 opinion dissenting from the court's decision to deny en banc review in the E15 suit, Judge Brett Kavanaugh said he hopes the court's new governing precedent on prudential standing can be "clarified at some point in a manner that comports with the Supreme Court's recent decisions on jurisdiction and prudential standing." His dissent could bolster the petitioners should they seek high court review, though if the Supreme Court declines to review the pending case, Kavanaugh appears likely to press the standing argument in the D.C. Circuit.

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Coal

EPA Limits Scope Of Review For Oil Groups' NSR Permit Rule Streamlining

In a blow to industry efforts to streamline federal permitting for new energy facilities, EPA has rejected a request from several oil and gas organizations for a broad reconsideration of a new source review (NSR) rule in order to simplify the program.

In a Jan. 10 Federal Register notice, EPA says that even though it will consider two aspects of the rule out of 18 that the oil and gas groups contested, it is rejecting industry's request to stay implementation of the rule pending completion of the reconsideration process.

The rule sets "minor" and "major" source requirements for NSR and prevention of significant deterioration (PSD) permits on tribal land not regulated by states. Major sources are those that emit more than 100 tons per year (tpy) of an air pollutant -- minor sources emit less than this threshold and are subject to less stringent emissions control requirements.

The rule was originally proposed by the Bush EPA to fill a regulatory "gap" as previously neither states nor EPA regulated tribal NSR programs. But the rule alarmed industry petitioners, who feared it imposed new requirements and would delay permitting. EPA says that claim is false and based on a misunderstanding of the rule.

In a separate agency program affecting energy facilities, EPA officials are questioning how many resources the agency will need to devote to its nascent Safe Drinking Water Act permitting system for carbon capture and sequestration (CCS) projects, given the complex technical needs and the lack of pending project applications, which many say is due to lack of a carbon control regime.

The questions over the program's resources is the latest indication that efforts to create a viable CCS program are struggling. Many say that Congress' failure to enact a cap-and-trade system for GHGs, and EPA's failure to set a GHG performance standard for existing coal-fired power plants, means there are no policy drivers for large-scale CCS.

During a Jan. 7 EPA progress review of Science to Achieve Results (STAR) grant research on carbon geo-sequestration, EPA Region V's Jeffrey McDonald said the permitting process has already raised several questions, including what expertise regions will need "if CCS does not gain momentum?"

Even as it struggles to implement its drinking water rules, the agency has yet to test its GHG reporting requirements for CCS. Mike Kolian of the agency's Office of Air and Radiation told the review that the agency has yet to receive a request to approve a monitoring, reporting and verification plan that project operators must submit to limit and report atmospheric GHG releases from CCS wells before they can win SDWA permits.

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Renewables

PTC Extension May Prompt Reform Talks; Salazar Exit Creates Clean Energy Uncertainty

Congress' extension of the production tax credit (PTC) for wind, biomass and other renewable resources could buy time for Congress and industry to engage in a longer-term discussion about tax reform in the coming year, but questions have emerged over the future of the Obama administration's energy agenda with the announced departure of Interior Secretary Ken Salazar.

Congress in the fiscal cliff deal to avoid mandatory budget cuts and tax increases extended the PTC, modifying its language to say that projects must "commence construction" by the end of 2013 to qualify, rather than being "in service" as previously required. The change in language, sources say, makes the extension longer than one year -- potentially significantly longer.

But Congress did not define criteria for commencing construction or set forth restrictions on when facilities need to be completed to qualify, and stakeholders are turning to Congress and the Treasury Department to provide clarification. A Treasury official says the department is aware of the need for further guidance on PTC implementation but offered no details on timing or content, and officials with the utility Exelon are already suggesting that the revision be interpreted narrowly.

Meanwhile, Salazar's forthcoming departure is raising questions about potential 11th-hour clean energy policies he might issue and the future of the Obama administration's energy agenda, with observers split over the energy policies his successor should adopt. The announcement is the latest example of turnover within the Obama administration that has clean energy proponents watching closely to see if administration departures and reshuffling slow the ability of the White House and federal agencies to move major new efforts.

The White House announced Salazar's departure in a Jan. 16 statement, praising his work "to promote renewable energy projects on our public lands and increase the development of oil and gas production" while using "the best science" and "the highest safety standards." Salazar, who will have served as DOI secretary for four years by the end of this month, plans to leave by the end of March.

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Congress

House GOP Moves Quickly To Repeal Clean Energy Incentives In 'Cliff' Deal

A group of House Republicans is backing recently introduced legislation to repeal a slew of tax credits for biofuels and alternative vehicles that were included in the fiscal cliff package to avert increased income taxes, even as the biofuel industry is expressing concern that the deal did not go far enough as it failed to extend funding for a key crop program needed to help meet EPA's renewable fuel targets.

Congress approved legislation to avert the fiscal cliff earlier this month, which included many but not all of a slew of tax credits for biofuels. But House Republicans, the petroleum industry and others are already targeting the credits and other biofuel policies for rollback in the 113th Congress. For instance, House Energy & Commerce Committee power panel Chair Ed Whitfield (R-KY) and lead sponsor Rep. Mike Pompeo (R-KS) Jan. 15 introduced H.R. 259, which would repeal these and other tax credits.

The bill, similar to legislation Pompeo introduced in the 112th Congress, repeals tax credits for alternative fuel refueling infrastructure, biodiesel, fuel cells and electric vehicles as well as credits for enhanced oil recovery, carbon sequestration and other non-vehicle energy programs.

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Mailing address: 1919 South Eads Street, Suite 201, Arlington VA 22202

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